P.C. Agenda: 12-04-13 Item No. 3.a.

STAFF REPORT PLANNING COMMISSION

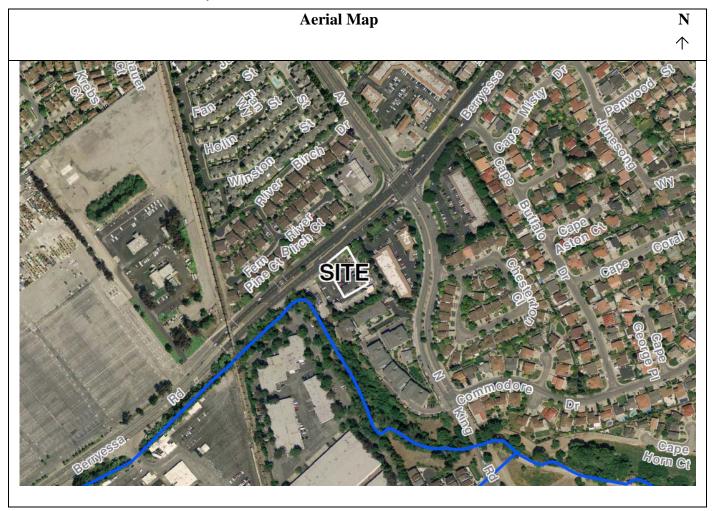
FILE NO.: CP13-046 Submitted: June 26, 2013

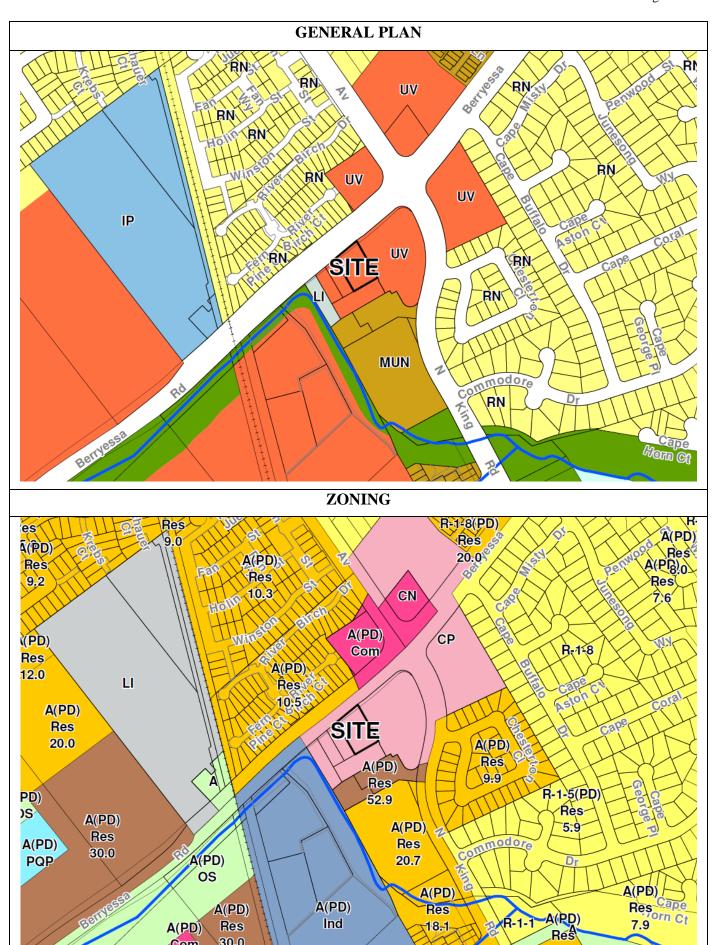
PROJECT DESCRIPTION:

Conditional Use Permit to allow a child day care center within two existing tenant spaces, totaling 3,480 square-feet, separated by a new 1,965 square-foot associated outdoor play area in an existing shopping center on an approximately 0.55 gross acre site in the CP Commercial Pedestrian Zoning District.

Zoning	CP Commercial Pedestrian
San José 2040 General Plan	Urban Village
Council District	1
Annexation Date	January 7, 1971
Historic Resource	No

LOCATION: South of Berryessa Road, approximately 330-feet southwest of North King Road/Lundy Avenue (1682 and 1686 Berryessa Road).





RECOMMENDATION

Planning staff recommends approval of the proposed Conditional Use Permit for the following reasons:

- 1. The proposed project is consistent with the Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Urban Village, and supports General Plan goals for strengthening neighborhoods by providing amenities and services within walking distance of residences.
- 2. The proposed project is consistent with City Council Policy 6-14: Guidelines for Child Care.
- 3. The proposed project will conform to the applicable regulations set forth in the Zoning Ordinance (Title 20).
- 4. The proposed use will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, impair the utility or value of a property of other persons located within the vicinity of the site, or be detrimental to public health, safety, or general welfare.

BACKGROUND AND DESCRIPTION

On June 26, 2013 the applicant, Norris Mitchell, on behalf of Genius Kids, applied for a Conditional Use Permit to allow a child day care center use within two existing tenant spaces, totaling 3,480 square-feet, separated by a 1,965 square-foot outdoor, fenced play area at an existing neighborhood retail shopping center on a 0.55 gross-acre site. Child day care center uses require a Conditional Use Permit in the CP Commercial Pedestrian Zoning District.

The proposed child day care center would include a total projected enrollment of up to 90 children, with five full-time employees and two part-time employees. The existing shopping center is composed of a mixture of office, personal services, medical offices, and restaurants.

ANALYSIS

The proposed project was analyzed with respect to conformance with the following: 1) Envision San José 2040 General Plan, 2) City Council Policy 6-14, Guidelines for Childcare, 3) the Zoning Ordinance, and 4) California Environmental Quality Act (CEQA).

General Plan Conformance

The proposed child day care center use is consistent with the Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Urban Village. This designation supports a broad range of commercial activity, including commercial uses that serve communities in neighboring areas, such as neighborhood-serving retail, services and office development. In addition to the General Plan land use diagram, the project conforms to other key General Plan policies as noted below.

• Community Design Goal CD-7.6: Incorporate a full range of uses in each Urban Village Plan to address daily needs of residents, businesses, and visitors in the area. Consider retail, parks, school, libraries, day care, entertainment, plazas, public gathering space, private community gathering facilities, and other neighborhood-serving uses as part of the Urban Village planning process. Encourage multi-use spaces wherever possible to increase flexibility and responsiveness to community needs over time.

The day care center is proposed within an existing shopping center. The day care center will add to the current range of uses available in the shopping center and the nearby area.

• <u>Implementation Policy IP</u>-5.10: Allow non-residential development to proceed within Urban Village areas in advance of the preparation of an Urban Village Plan.

Although an Urban Village Plan has not been prepared for this site, this commercial use can proceed in advance of the preparation of an Urban Village Plan.

Council Policy 6-14 (Guidelines for Child Care) and Zoning Code Conformance

The primary policy applicable for the review and analysis of this project is City Council Policy 6-14: Guidelines for Child Care. These guidelines, adopted in 1982, were written to ensure that child care centers conform to City requirements, State licensing regulations, and that they are compatible with surrounding neighborhoods. The criteria in the policy are intended as reference points so that there is a common understanding of the minimum design and operational expectations of preschools and child care centers in San José. Planning staff has reviewed this proposal for consistency with the relevant sections of this policy.

Facility Location

The day care use is located within a neighborhood shopping center, with a parking lot towards the front and a single-room-occupancy use adjacent to the rear property line of the subject site. The center is also located along a major arterial road, Berryessa Road, which will be less than 1,000-feet from the future BART station.

The proposed child care center is not within close proximity to any uses, such as industrial uses with storage of hazardous materials that would adversely affect the children at the center.

Traffic and Circulation/Parking and Drop-off

Per State law, infants and toddlers need to be signed in and out by the designated guardian of the child inside the facility. Thus, unlike in a school with older children, parents in a day care center may not drop-off or pick-up the child alongside a curb. Children will not be in the parking area unsupervised. In addition, since there is no designated "start time" or "end time" like a school, the children are picked-up and dropped-off at varying times, which reduces the number of vehicles coming to and leaving the site at any given point of time.

The property owner has committed to providing two parking spaces dedicated to drop-off and pick-up. The morning day care drop off will be between 8:30 a.m. and 9:30 a.m., and pickup will be between 11:30 a.m. and 12:30 p.m. The facility will also provide after-school day care service, with drop-off occurring between 2:30 p.m. and 3:30 p.m., and pickup occurring between 4:00 p.m. and 6:30 p.m.

Title 20 of the San José Municipal Code requires that all uses on a site provide the minimum amount of parking as stated in Table 20-190. The proposed child day care center would include a total projected enrollment of up to 90 children, with five full-time employees and two part-time employees. The Code requires a total of 11 parking spaces. The existing shopping center is composed of a mixture of office, personal services, medical offices, and restaurants. There is a combined parking requirement of 60 parking spaces for the proposed day care and the existing uses. The project site provides 70 parking spaces, which exceeds the parking requirement. The existing site design includes maneuvering areas for cars on the subject property. This on-site circulation prevents any vehicles from needing to back onto the street.

Site Design

The project site has adequate physical characteristics to accommodate parking and good vehicular circulation. The project will be required to conform to all State regulations. The new play area will occupy a corner courtyard area and will maintain adequate pedestrian access in front of the shopping center, and to adjacent tenant spaces.

The applicant proposes a 6-foot high wrought iron fence and the existing 8-foot high pre-cast concrete fence for the outdoor play area, which is consistent with the Policy.

Land Use Compatibility

The site is surrounded by commercial uses on the north, east, and west, and a single-room-occupancy (SRO) development to the south. The proposed day care facility is limited to 90 children. The outdoor play area is anticipated for use for only a few hours during the middle of the day. The policy states that play areas should be located away from adjacent residences as much as possible. As proposed, the play area is adjacent to the parking area and laundry room of the neighboring SRO. There is an 8-foot high pre-cast concrete fence along the property line between the play area and the SRO, and the shopping-center building frontage faces away from the residential development.

California Environmental Quality Act (CEQA)

Under the provisions of Section 15301 (existing facilities) of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that no significant change to the previous use is proposed.

CONCLUSION

As presented in this staff report, this proposal will provide a convenient and needed service to families residing or working in this area of the City. No new construction is proposed, other than the creation of an outdoor play area, which is of an appropriate size and is well integrated in the courtyard in a manner that will not negatively affect pedestrian circulation within the retail center. The project has been designed to meet the City's zoning and land use policy standards and will be compatible with the surrounding area.

PUBLIC OUTREACH/INTEREST

In conformance with Council Policy 6-30: Public Outreach Policy, a notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. This staff report is also posted on the City's website. Staff has been available to discuss the proposal with interested members of the public. As of the date of the writing of this staff report no members of the public have commented on this proposal.

Project Manager: Kristinae Toomians Approved by:

Owner/Applicant:

NVP Associates

San Jose, CA 95117

Genius Kids, Inc. Rennu Dhillon

Fremont, CA 94555

4125 Blackford Ave, #200

4966 Paseo Padre Parkway

Nor-Cal Restaurant Design 310 South Center Parkway Mountain House, CA 95391

Owner:

Applicant:

Contact:

Attachn				
Resoluti	on			
Develop	ment pla	an set		

RESOLUTION NO.

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit to allow a child day care center within two existing tenant spaces, totaling 3,480-square-feet, separated by a new 1,965-square-foot associated outdoor play area in an existing shopping center on an approximately 0.55-gross-acre site in the CP Commercial Pedestrian Zoning District located south of Berryessa Road, approximately 330-feet southwest of North King Road/Lundy Avenue (1682 and 1686 Berryessa Road).

FILE NO. CP13-046

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 26, 2013, an application (File No. CP13-046) was filed for a Conditional Use Permit for the purpose of allowing child day care center on that certain real property (hereinafter referred to as "subject property"), situated in the Commercial Pedestrian Zoning District, located on the south side of Berryessa Road, approximately 330-feet southwest of North King Road/Lundy Avenue, San José (1682 and 1686 Berryessa Road); and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Lil Genius Kid" dated May 15, 2013. Said development plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

- 1. The site is designated as Urban Village on the Envision San José 2040 General Plan Land Use/Transportation Diagram.
- 2. The site is currently zoned CP Commercial Pedestrian.
- 3. A day care center is a conditional use in this CP Commercial Pedestrian Zoning District.
- 4. The proposed day care center would occupy two existing tenant spaces, totaling 3,480-square-feet, separated by a new 1,965-square-foot associated outdoor play area in an existing shopping center on an approximately 0.55-gross acre site.
- 5. The 0.55-gross-acre site is currently developed with a neighborhood shopping center.
- 6. No expansion of the building or parking lot is proposed.
- 7. The proposed day care use will have a capacity of 90 children and 7 employees.
- 8. The applicant has requested that regular hours of operation for the day care center be from at least 7:00 a.m. to 6:30 p.m., Monday through Friday.
- 9. The Zoning Ordinance requires day care centers to provide 1 parking space per 6 children for the first 30 children, and thereafter 1 space per 10 children, resulting in a requirement of 11 parking spaces for the proposed use for 90 children.
- 10. The existing shopping center is composed of a mixture of office, personal services, medical offices, and restaurants.
- 11. The site provides a total of 70 spaces in common parking facilities on the subject site.
- 12. There is a combined parking requirement of 60 parking spaces for the proposed day care and the existing uses.
- 13. Surrounding land uses include commercial uses located to the west, an industrial park to the east, a single residence occupancy (SRO) development to the south, and a single-family, detached residential development across Berryessa Road within the San José City limits.
- 14. Under the provisions of Section 15301(a) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

- 1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and

- 2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and
- 3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
- 2. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of issuance hereof by said Director, if within such two-year time period, the use or the construction of play area improvements has not commenced, pursuant to and in accordance with the provision of this Conditional Use Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/ Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
- 3. Sewage Treatment Demand. Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval, may be imposed by the approval authority.

- 4. **Use Authorization.** This Conditional Use Permit authorizes the following uses to be implemented on the property subject to the terms of this permit:
 - a. A child day care center in an existing 3,480-square-foot tenant space and a new associated 1,965-square-foot outdoor play area.
- 5. Building Permit/Certificate of Occupancy. Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
- 6. **Conformance with Plans.** Except as noted in condition number 7 below, construction and development shall conform to approved plans entitled, "Lil Kid Genius," last revised on May 15, 2013. Said plans and file shall be made available with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
- 7. **Other Permits Required.** This facility shall secure any and all required licenses and permits from the County and State.
- 8. **Revocation.** This Conditional Use Permit is subject to revocation for violation of any of its provisions or conditions.
- 9. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
- 10. **Conformance with Other Permits.** Unless specifically modified with this permit, the applicant shall comply with all conditions noted in the previously issued site development permits and conditional use permits which relates to the overall shopping center including the subject tenant space.
- 11. **Lighting.** No new exterior lighting is approved at this time. All proposed lighting shall be subject to approval by the Director of Planning.
- 12. **Parking Requirement.** The property owner is responsible for ensuring that the mix and scale of uses on the subject site, in conjunction with the above hours of operation, conform to the parking requirements at all times.
- 13. **Number of Students/Operation of Facility.** The day care facility shall be limited to a maximum of 90 children.
- 14. **Signage.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
- 15. **Nuisance**. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
- 16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

- 17. **Anti Litter**. The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
- 18. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted. Trash areas shall be maintained in a manner to discourage illegal dumping.
- 19. **Visible Street Numbers**. Street numbers shall be visible day and night from the nearest street, either by means of illumination or by use of reflective materials.
- 20. Outside Storage. No outside sales or storage is permitted.
- 21. **Noise.** The sound level generated on this site shall not exceed 55 dba DNL at the rear (west) property line which is adjacent to a property used for residential purposes.
- 22. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions.
 - a. *Transportation*: The current 3,480 square foot retail site generates approximately 42 AM and 126 Pm peak hour trips. The project proposes to generate 80 AM and 85 PM peak hour trips; resulting in an increase in 38 AM peak hour trips and a decrease in 41 PM peak hour trips. The nearest affected intersection is Berryessa Road and Lundy Avenue. The additional traffic generated by this project will not affect the level of service at this intersection. We conclude that the subject project will be in conformance with the City of San José Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.
 - b. *Flood: Zone X:* The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for zone X.
 - c. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - d. *Undergrounding*: The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Berryessa Road prior to issuance of a Public Works Clearance. 10 percent (10%) of the base fee in place at the time of payment will be due. Currently, the 2013 base fee is \$418 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued. (Based on 2013 rate, the fee is approximately \$4,257.00.)
 - e. *Street Trees:* Replace any missing street trees in empty tree wells or park strips along Berryessa Road and match existing trees per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects." Obtain a DOT street tree planting permit for any proposed street tree plantings.

- 23. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans*. This permit file number, CP13-046, shall be printed on all construction plans submitted to the Building Division.
- 24. **Change of Occupancy**. Change of occupancy for the subject structure shall be accomplished through the issuance of a Building Permit through the Building Division. A Building Permit is required for the new use even if no new construction is proposed. The plans shall be prepared by a licensed architect
- 25. **Fire Safety.** Compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process to the satisfaction of the Fire Chief. Prior to Building Clearance, all requirements for fire safety shall be met to the satisfaction of the Fire Chief.
- 26. **Landscaping.** All existing landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be provided in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

AYES:
NOES:
ABSENT:
ABSTAIN:

NORMAN KLINE
Chairperson

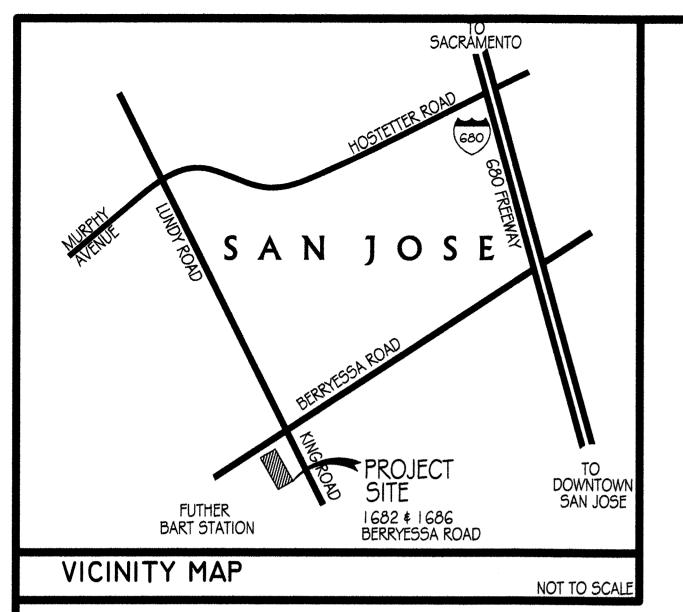
ADOPTED and issued this 4th day of December 2013, by the following vote:

JOSEPH HORWEDEL
Director of Planning, Building & Code Enforcement
Planning Commission Secretary

ATTEST:

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.



PROPOSED NEW TENANT IMPROVEMENTS FOR: SMP KID ZONE LLC

LIL GENIUS KID BERRYESSA ROAD

1682 & 1686 BERRYESSA ROAD SAN JOSE, CALIFORNIA 95133-1062

PROJECT SUMMERY DATA:

SCOPE OF WORK:

INSTALLATION OF NEW ADA TOILET ROOM, CHILDREN'S TOILET ROOM, PAINTING, CARPET & CONSTRUCTION OF NEW OUTDOOR PLAY AREA.

NOT TO SCALE

TENANT SPACE:

PROPOSED USE:

CBC OCCUPANCY GROUP:

DAY CARE FACILITY E OCCUPANCY

CBC CONSTRUCTION TYPE:

TYPE VB "SPRINKLED"

CODES:

2010 CBC, CMC, CPC & 2010 CEC

2010 GREEN BUILDING STANDARDS CODE (GBSC).

2010 ENERGY STANDARDS

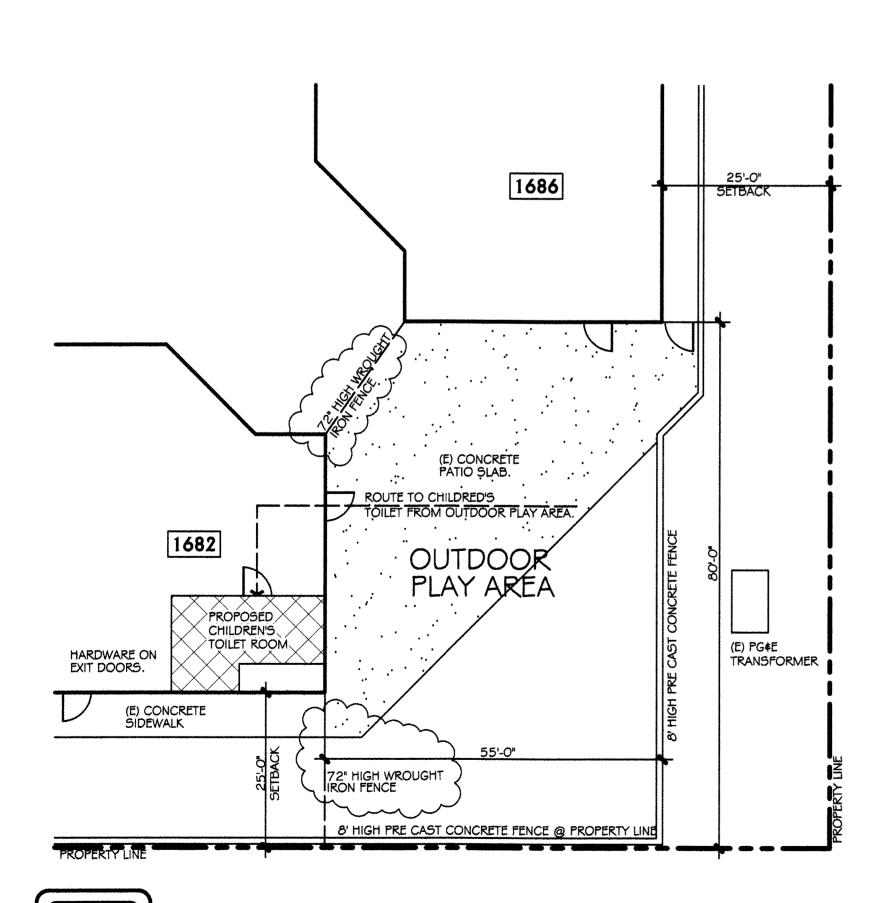
STORIES:

PREVIOUS USE:

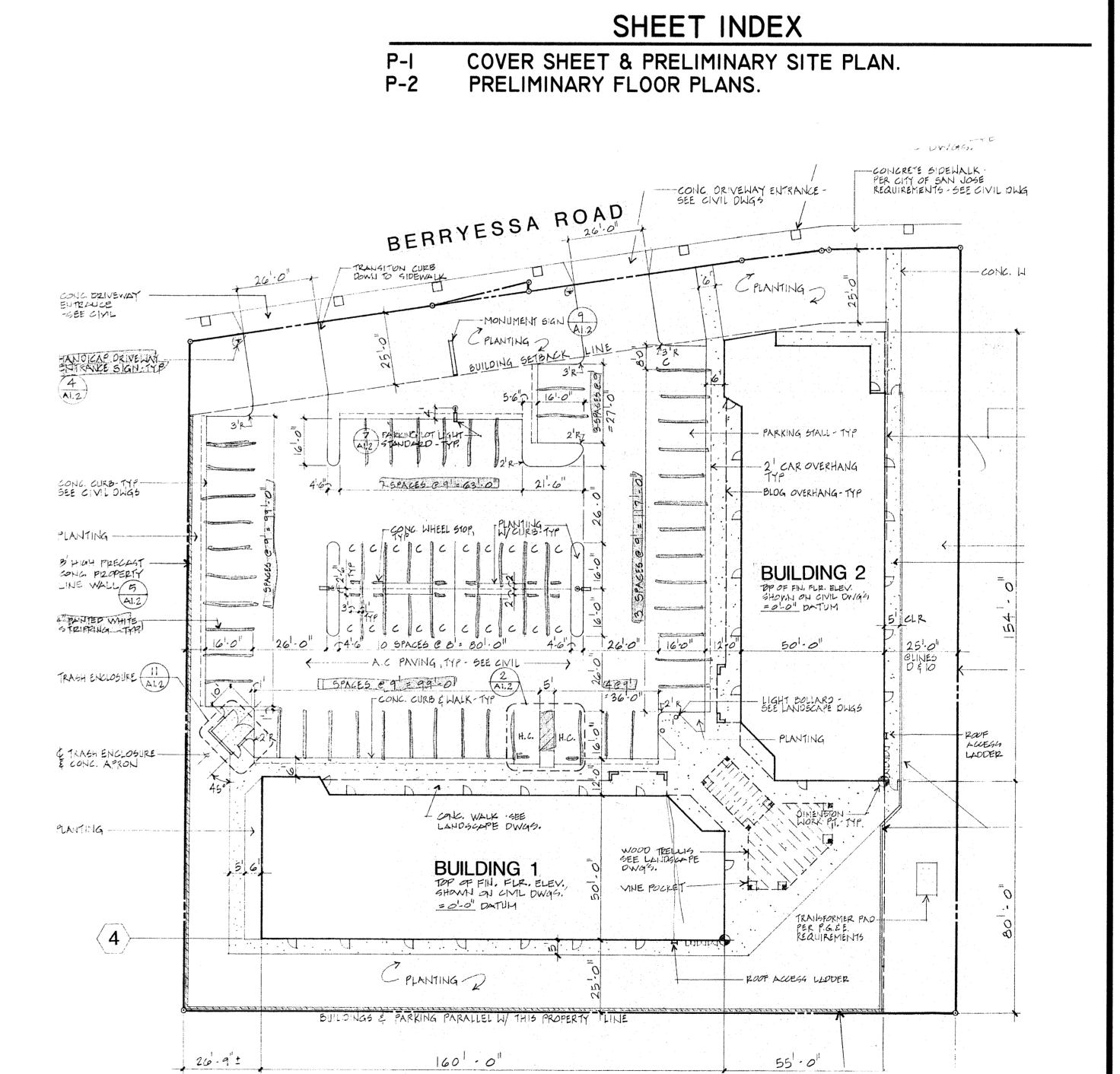
ONE STORY RETAIL SPACE

1682 BERRYESSA ROAD UNIT 1,750 SQUARE FEET 1682 BERRYESSA ROAD UNIT 1,730 SQUARE FEET

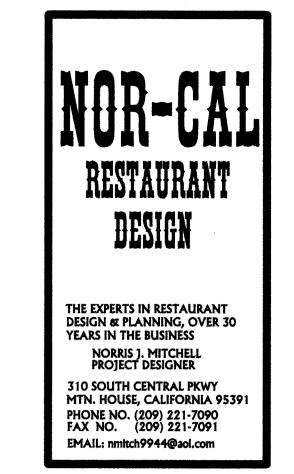
SQUARE FOOTAGE TOTAL: 3,480 SQUARE FEET

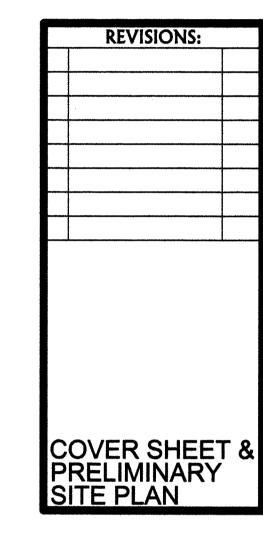






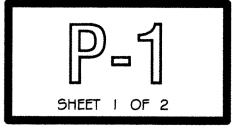
PROJECT SITE PLAN



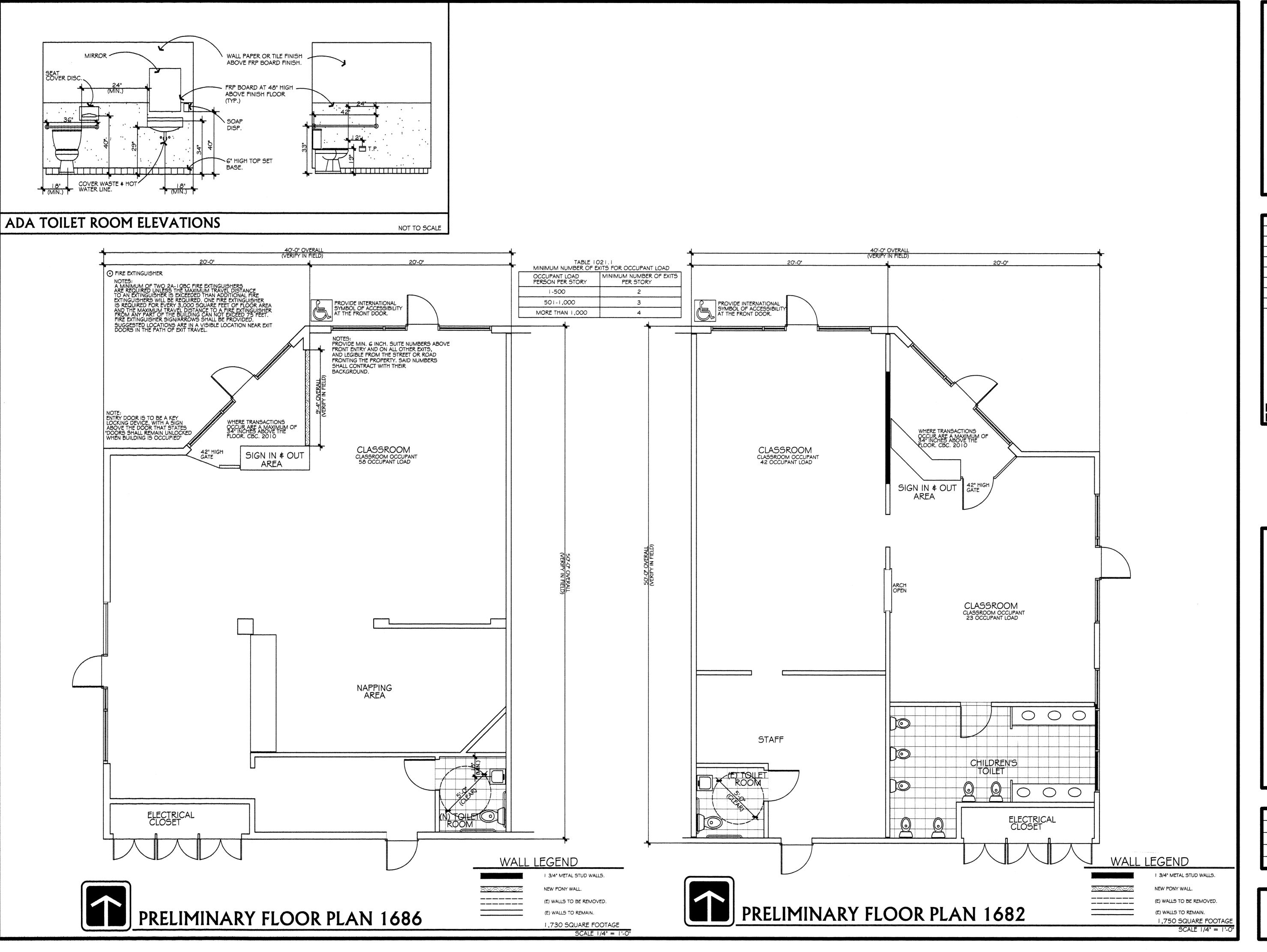




NORRIS M. N. J. M. MAY 2013 AS SHOWN 2013-15



NOT TO SCAL



NOR-CAL RESTAURANT DESIGN

THE EXPERTS IN RESTAURANT
DESIGN & PLANNING, OVER 30
YEARS IN THE BUSINESS
NORRIS J. MITCHELL
PROJECT DESIGNER

310 SOUTH CENTRAL PKWY
MTN. HOUSE, CALIFORNIA 9539
PHONE NO. (209) 221-7090
FAX NO. (209) 221-7091
MAIL: nmitch9944@aoi.com

PRELIMINARY FLOOR PLANS

LIL GENIUS KID
BERRYESSA ROAD
1682 & 1686 BERRYESSA ROAD
SAN JOSE, CALIFORNIA 95133-1062

NORRIS M.

N. J. M.

MAY 2013

AS SHOWN

2013-15

